

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAMES LAMONT MOORE.

| Case No. 2:19-cv-02110-KJD-DJA

Petitioner,

ORDER

v.

JERRY HOWELL, et al.,

Respondents.

14 This is James Lamont Moore's *pro se* petition for writ of habeas corpus pursuant
15 to 28 U.S.C. § 2254. This court's order dated March 19, 2020 contained a clerical error
16 (see ECF No. 8). That order is therefore vacated and replaced with this order.

17 Moore has responded to this court's show-cause order (see ECF No. 7). The
18 court has reviewed the petition pursuant to Habeas Rule 4, and respondents shall file a
19 response.

20 A petition for federal habeas corpus should include all claims for relief of which
21 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
22 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
23 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
24 petition, he should notify the court of that as soon as possible, perhaps by means of a
25 motion to amend his petition to add the claim.

26 **IT IS THEREFORE ORDERED** that this court's order dated March 19, 2020
27 (ECF No. 8) is **VACATED**.

1 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
2 including potentially by motion to dismiss, within **90 days** of service of the petition, with
3 any requests for relief by petitioner by motion otherwise being subject to the normal
4 briefing schedule under the local rules. Any response filed shall comply with the
5 remaining provisions below, which are entered pursuant to Habeas Rule 5.

6 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
7 in this case shall be raised together in a single consolidated motion to dismiss. In other
8 words, the court does not wish to address any procedural defenses raised herein either
9 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
10 answer. Procedural defenses omitted from such motion to dismiss will be subject to
11 potential waiver. Respondents shall not file a response in this case that consolidates
12 their procedural defenses, if any, with their response on the merits, except pursuant to
13 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
14 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
15 do so within the single motion to dismiss not in the answer; and (b) they shall
16 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
17 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
18 procedural defenses, including exhaustion, shall be included with the merits in an
19 answer. All procedural defenses, including exhaustion, instead must be raised by
20 motion to dismiss.

21 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
22 shall specifically cite to and address the applicable state court written decision and state
23 court record materials, if any, regarding each claim within the response as to that claim.

24 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of
25 the answer, motion to dismiss, or other response to file a reply or opposition, with any
26 other requests for relief by respondents by motion otherwise being subject to the normal
27 briefing schedule under the local rules.

1 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
2 herein by either petitioner or respondents shall be filed with a separate index of exhibits
3 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
4 be identified by the number of the exhibit in the attachment.

5 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of **all**
6 **pleadings and indices of exhibits only** in this case to the Clerk of Court, 400 S. Virginia
7 St., Reno, NV, 89501, directed to the attention of "Staff Attorney" on the outside of the
8 mailing address label. Additionally, in the future, all parties shall provide courtesy copies
9 of any additional exhibits submitted to the court in this case, in the manner described
10 above.

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12 DATED: 20 March 2020.
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KENT J. DAWSON
15 UNITED STATES DISTRICT JUDGE
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